

Remarks/Arguments

Claims 1-71 are pending in this application. Claim 23 has been amended herein.

In the present action, the Examiner has rejected claims 23-44 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory matter. Applicants have amended the preamble of claim 23 to expressly recite a "computer-readable medium" on which the computer program code can be embodied. Claims 24-44 incorporate the above change through dependency. Support for the above recitation can be found in the specification in paragraph [0055]. Applicants submit that claims 23-44 meet the requirements of 35 U.S.C. § 101 and reconsideration and withdrawal of the 35 U.S.C. § 101 of claim 23 is requested.

The Examiner has rejected claims 1-71 under 35 U.S.C. §103(a) as being unpatentable over the cited article entitled, "A Smart Failure Mode and Effect Analysis Package" to Chakib Kara-Zaitri et al. ("Chakib") in view another cited article entitled, "Combining Computational-Simulations with Probabilistic-Risk-Assessment Techniques to Analyze Launch Vehicles" to Gaspare et al. ("Gaspare et al."). In order to establish the obviousness of a claim, one of the showings the Examiner must make is that all the claim limitations are taught or suggested by the prior art. MPEP 2143.03. The Examiner has not met this burden. Claim 1 recites:

"identifying at least one failure mode for a function of the organization;

identifying at least one cause and at least one effect for at least one of the at least one failure mode;

acquiring ratings associated with the at least one cause and the at least one effect;

permuting the at least one failure mode, the at least one cause, and the at least one effect to define at least two risk items; and

producing a risk prioritization report of the at least two risk items based at least in part on the ratings associated with the at least one cause and the at least one effect."

The Examiner relies solely on Gaspare to disclose the claimed element of "permuting the at least one failure mode, the at least one cause, and the at least one effect to define at least two risk items." Specifically, the Examiner cited pages 346-347 in Gaspare which recites:

"two matrices may be constructed, one which contains the permutations of the identified driving parameters, in other words, all of the possible initial failure states for a particular failure mode and another matrix containing the associated probability for each failure state."

Gaspare merely states that a matrix is formed that has all of the possible failure states for a failure mode. There is no disclosure in Gaspare of “permuting the at least one failure mode, the at least one cause, and the at least one effect to define at least two risk items.” There is no teaching of including the at least one effect in the permuting process of Gaspare. There are not at least two risk items defined by the permutation of Gaspare. Since neither Chakib nor Gaspare, whether considered individually or in combination, teach all of the elements of claim 23, the rejection under 35 U.S.C. §103 of claim 23 cannot stand and withdrawal of such rejection is respectfully requested.

With regard to the rejection of claim 2, Applicants note that the Examiner did not find the elements of claim 2 in any of the cited art, but simply took Official Notice that it would be obvious. The use of facts beyond what is expressly shown in the cited art must be limited to those which are "capable of such instant and unquestionable demonstration as to defy dispute." M.P.E.P. § 2144.03(A). All the portions of the art cited by the Examiner regarding this recitation refer to nothing but risk calculations. The recording of a mitigation plan associated with a risk item in the risk prioritization report and tracking implementation of the mitigation plan, as claimed by Applicants, is part of Applicants' operational risk management process that takes place after assessment of the risk. Applicants submit that it is impossible for the casual mention of risk calculation to render this teaching obvious so instantly and unquestionably as to defy dispute. The Examiner is required to cite the best art available to support these contentions. M.P.E.P. § 2144.03(C).

With regard to the rejection of claims 3-8, the Examiner cited Chakib. Chakib does not disclose the all claim features of each of claims 3-8. For example, claim 3 recites that “the ratings” further comprise “a response rating associated with each of the at least one effect.” There is no disclosure of such a response rating in Chakib and, in fact, the term is never even mentioned. Claims 4 and 7 both recite “calculating an adjusted criticality based on the criticality, the severity rating, and the response rating.” Because Chakib does not disclose a “response rating” and Chakib cannot teach of such “adjusted criticality.” With respect to the rejection of claims 5 and 8, Applicants are at a loss to find any of the claim elements of these claims in Chakib. There is simply no disclosure in Chakib of “determining whether the at least one effect is related to at least one of a group consisting of compliance and strategic planning” or that “the

producing of the risk prioritization report further comprises determining whether each of the at least two risk items represents at least one of a group consisting of a compliance related risk, a strategic planning related risk, a hidden factory, and a tail event.” With respect to claim 6, Chakib does not disclose “a response rating,” as previously discussed, and thus, it is impossible for Chakib to disclose that “a response rating associated with each of the at least one effect,” as recited in claim 6.

With respect to the rejections of claims 9-20, 31-43, 47-52, and 58-65, Applicants note that the Examiner did not find the elements of any of these claims in the cited art, but simply took Official Notice that it would be obvious. As previously mentioned, the use of facts beyond what is expressly shown in the cited art must be limited to those which are "capable of such instant and unquestionable demonstration as to defy dispute." M.P.E.P. § 2144.03(A). Applicants submit that it is impossible for every element of claims 9-20, 31-43, 47-52, and 58-65 to be so obvious so instantly and unquestionably as to defy dispute. The Examiner is required to cite the best art available to support these contentions. M.P.E.P. § 2144.03(C).

Applicants note that the Examiner rejected claims 21-22, 44, 53 and 66-71 when rejecting the elements of claim 1. (See bottom of page 3, Office Action). Applicants respectfully submit that the Examiner bears the initial burden of factually supporting a conclusion of obviousness and the Examiner has failed to meet this burden. The Examiner has not indicated where or how the cited art discloses these claim elements. Applicants have read the cited art and none of the elements of claims 21-22, 44, 53 and 66-71 are taught or disclosed by the cited art. For example, claims 21, 44, and 53 recite “determining a stability ratio” that “represents a comparison of one of a number of priority risk items and a number of non-priority risk items to a total number of risk items.” Neither Chakib nor Gaspare disclose such claim limitations. Further, claims 66-71 recite a “risk meta-modeling system.” There is no disclosure of these claim elements in the cited art.

Independent claims 23, 45, and 54 recite features similar to claim 1 and are allowable for at least the same reasons that claim 1 is allowable. All other claims are dependent from one of the independent claims and are allowable for at least the same reasons that the independent claims are allowable.

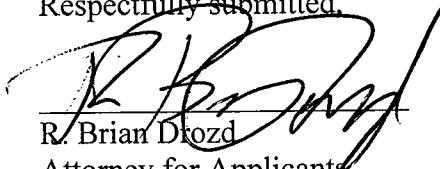
Applicants note that claim 56 was rejected in the Office Action Summary Form (Form PTOL-326), but was not specifically addressed at all in the Office Action remarks section. Applicants submit that claim 56 is allowable.

Applicants believe they have responded to the Examiner's concerns, and that the application is in condition for allowance. Reconsideration of this application as amended is hereby requested. Should any outstanding issues remain, Applicants request the Examiner call the undersigned attorney.

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